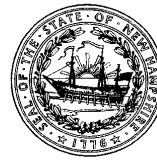




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

August 23, 2006

Munce's Superior, Inc.
Attn: Rob Munce
620 Main Street
Gorham, NH 03581

Re: Docket No. AF 04-037 – Munce's Superior, Inc.

Dear Mr. Munce:

Enclosed for your records is a copy of the fully executed and accepted Motion to Accept Settlement Agreement in the above-captioned matter.

On behalf of the Department of Environmental Services, thank you for your cooperation in resolving this matter.

Sincerely,

COPY
Michael P. Occhipinti,
Legal Assistant

cc: Michael J. Walls, DES Assistant Commissioner
Anthony P. Giunta, P.G., Director, Waste Management Division
Jennifer J. Patterson, NH DOJ
Gretchen R. Hamel, Administrator, DES Legal Unit
Kerry D. Barnsley, Compliance Attorney, DES Legal Unit
DES Public Information Officer
Lynn Woodard, DES WMD
Thomas Beaulieu, DES WMD

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Telephone: (603) 271-3503 • Fax: (603) 271-2867 • TDD Access: Relay NH 1-800-735-2964
DES Web site: www.des.nh.gov

Munce's Superior Inc.
Attn: Rob Munce
620 Main Street
Gorham, NH 03581

**ADMINISTRATIVE FINE
No. AF 04-037**

Re: Tenney Mountain Country Store
312 Route 3A, Plymouth, NH
UST ID#0-114178

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Waste Management Division ("the Division") and Munce's Superior Inc., parties to the above-captioned matter, and stipulate to the following:

1. The Commissioner of the Department of Environmental Services ("DES"), is authorized under RSA 146-C:10-a to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C and Env-Wm 1401 relating to installation, maintenance, operation, and closure of underground storage facilities. Pursuant to RSA 146-C:10-a, the Commissioner has adopted Env-C 607 to establish the schedule of fines for such violations.
2. Munce's Superior Inc. ("Munce's") is the registered facility owner of three underground storage tanks ("USTs") at the Tenney Mountain Country Store facility ("the Facility"), further identified as UST # 0-114178, located on real property at 312 Route 3A, Plymouth, NH ("the Property"). Harold Munce signed the Registration for Underground Storage Tank Systems for the Facility, dated March 5, 1992, as the owner on behalf of Munce's.
3. On August 13, 2004, the Division issued Notice of Proposed Administrative Fine No. AF 04-037 ("the Notice") to Munce's seeking fines totaling \$11,200 for violations of New Hampshire Administrative Rule Part Env-Wm 1401.
4. The Notice cited Munce's for violating Env-Wm 1401.11(a) by failing to maintain accurate stock inventory records for all three USTs in accordance with RSA 146-C:5 and Env-Wm 1401.11. Pursuant to Env-C 607.05(a) the Division sought a fine of \$1,500.
5. The Notice further cited Munce's for violating Env-Wm 1401.21(l) for failing to display and permanently affix a certificate bearing the Facility's tank information. Pursuant to Env-C 607.02(b) the Division sought a fine of \$100.
6. The Notice further cited Munce's for violating Env-Wm 1401.25(d) for failing to properly install and maintain overfill protection equipment on all three USTs. Pursuant to Env-C 607.05(j) the Division sought a fine of \$600.
5. The Notice further cited Munce's for violating Env-Wm 1401.30(a) by failing to conduct release detection for all of the piping systems at the three USTs. Pursuant to Env-C 607.03(j) the Division

sought a fine of \$3,000.

6. The Notice further cited Munce's for violating Env-Wm 1401.31(a) by failing to maintain leak monitoring equipment in good working order at all times to continuously perform their original design function for all three USTs. Pursuant to Env-C 607.05(d) the Division sought a fine of \$3,000.

7. The Notice further cited Munce's for violating Env-Wm 1401.33 by failing to install corrosion protection for the piping for all three USTs. Pursuant to Env-C 607.03(f) the Division sought a fine of \$3,000.

8. In order to settle this matter, the Division and Munce's have agreed to the terms of this Settlement Agreement ("Agreement"), as set forth herein.

9. Of the proposed fine, in the amount of \$11,200, 20% or \$2,240 shall be suspended due to this being a one-time unintentional violation.

10. The suspended portion of the proposed fine, in the amount of \$2,240 is contingent upon Munce's maintaining the subject UST facility in compliance with Env-Wm 1401 for a period of two years from the date of the execution of this Agreement. If Munce's fails to maintain compliance during the two-year period, the suspended portion of the fine, in the amount of \$2,240 shall become due and payable immediately. If Munce's maintains compliance for the prescribed two-year period, the suspended portion of the fine shall be waived.

11. Munce's agrees to pay the remaining \$8,960 upon execution of this Agreement by Munce's.

12. Payment under Paragraph #11 and any payment that becomes due pursuant to Paragraph #10 shall be paid by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
Attention: Michael Sclafani, Legal Assistant
P.O. Box 95
Concord, NH 03302-0095

13. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.

14. By executing this Agreement, Munce's waives its right to a hearing on or any appeal of the administrative fines identified in the Notice, and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

15. The effective date of this Agreement will be the date on which it is signed by Munce's, the

Director of the Waste Management Division, and the Commissioner of DES. After that date, this Agreement may be amended only by written agreement signed by both parties and the Commissioner. Any such amendment will become effective on the date on which it has been accepted by the Commissioner.

16. No failure by DES to enforce any provision of this Agreement after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further breach or default.

WHEREFORE, the parties respectfully request the Commissioner to accept the terms of this Agreement by granting this Motion.

Respectfully submitted,

Munce's Superior Inc.

 **COPY**

Rob Munce, Manager
Duly Authorized

8-10-06

Date

DES Waste Management Division


 **COPY**

Anthony J. Giunta, P.G., Director

8/22/06

Date

This Motion to Accept Settlement agreement is granted this 23rd day of August, 2006.

 **COPY**

Michael P. Nolin, Commissioner
Department of Environmental Services